

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Nebraska Resources)	
Company, LLC, Tulsa, Oklahoma,)	Docket No. NG-0053
Seeking a Certificate of Public Convenience)	
And Necessity Authorizing it to Operate as a)	
Jurisdictional Utility in Nebraska and Approval)	
Of Tariff)	

COMMENTS OF NORTHERN NATURAL GAS COMPANY ON MARCH 5 ORDER REGARDING PROPOSED SCHEDULE AND SCOPE OF HEARING

Northern Natural Gas Company (Northern) hereby submits its comments regarding the scope of the proceedings and proposed schedule pursuant to the Hearing Officer Order Requesting Comment Regarding Proposed Schedule and Scope of Hearing (March 5 Order) entered on March 5, 2008 in this docket.

PROPOSED SCOPE OF HEARING

Northern has the following comments on the proposed hearing scope as set forth in the March 5 Order.

Public Convenience. The March 5 Order indicates three areas that will be considered with respect to a determination of whether the application will promote public convenience: adequacy and sufficiency of the proposed services and facilities, the Applicant's financial and technical ability, and safety. Northern assumes that issues addressed will be consistent with the discussion at page 8 of the October 30, 2007 Order entered in Docket No. NG-0051/PI-130 (Investigation Order).

This application is a case of first impression for the Nebraska Public Service Commission (Commission). As such, the decisions made by the Commission in this docket will be critical to the Nebraska natural gas industry and Nebraska consumers and

other stakeholders far into the future. As the precise scope of the definition of public convenience under Nebraska law has not been determined, Northern urges the Commission to grant sufficient time and attention to this issue as part of this proceeding. At the planning conference, counsel for Nebraska Resources Company (the Applicant or NRC) indicated that he would provide a summary of what he thought the appropriate standard should be. Consideration should be given to including that requirement in the schedule and allowing the other parties to comment in response, in advance of the hearing. It may well be that the parties are largely in agreement about the appropriate standard.

Several issues in addition to the three listed in the March 5 Order must be within the scope of a determination of the public convenience under Nebraska law. Two of these issues are discussed briefly below.

- **Need.** First and foremost is the issue of whether the project is necessary.¹ Neb. Rev. Stat. § 66-1853 requires a showing of need for the project. Although the term “need” is not used explicitly, the language of the statute cannot be reasonably interpreted any other way.² To obtain the referenced certificate, Neb. Rev. Stat. § 66-1853 requires the Commission to find “that [the] public convenience will be promoted by the transaction of business” It is impossible to say the public convenience will be promoted if the project as proposed is not needed.

¹ See *Certification of New Interstate Natural Gas Pipeline Facilities* (Certificate Policy Statement), 88 FERC ¶ 61,227 (1999), *order clarifying statement of policy*, 90 FERC ¶ 61,128, *order further clarifying statement of policy*, 92 FERC ¶ 61,094 (2000) and *Southern Star Central Gas Pipeline, Inc.*, 115 FERC ¶ 61,219 at PP 19-20 (2006).

² The Applicant agreed at the planning conference and has made various filings showing that it acknowledges “need” as part of the statute. For example, note the caption of this docket.

- **Environmental and Landowner Protection.** The public convenience standard encompasses appropriate oversight by the Commission of NRC's compliance with all environmental laws and regulations. To protect the public interest, this oversight must include not only determining whether NRC *intends* to take all necessary steps, but in fact whether it has done so. Separately, at Commission Staff's request, Northern is submitting an overview of the Federal Energy Regulatory Commission's (FERC) environmental and landowner requirements. Based on Northern's experience, it is imperative for the Commission to address the interests of landowners and protection of the environment in detail. If not addressed as part of a determination of the public convenience, this void in state law will leave all landowners, and agricultural landowners in particular, with no means to address problems that may be created by the NRC project. Problems with intrastate pipeline construction in other states have included the failure of companies to communicate with landowners regarding final routes, a high number of failed easement negotiations resulting in high condemnation rates, inadequate soil restoration, improper soil separation and compaction, violations of environmental law, depth of pipe issues, and poor conservation practices. Some farmers also experienced subsequent lower crop yield in the land excavated for pipeline construction. The schedule should provide for meaningful input from landowners during the application process.

Duplicate Piping Prohibition: Northern agrees that the issue of whether all or portions of the proposed project are prohibited under Nebraska law must be addressed. Northern also requests that the Commission consider the issue of whether a specific

process should be adopted for determining issues of duplicate piping in the future, requiring natural gas transportation service providers to provide notice prior to constructing facilities or providing service that could be deemed to be duplicative.

Rates and Tariffs: Northern agrees that the rate issues indicated in the March 5 Order must be addressed before a certificate is granted. Further, with respect to rates, the hearing should address whether the Applicant has complied with Neb. Rev. Stat. § 66-1855. In addition, issues should include whether the Applicant's proposed tariff meets the requirements of Nebraska law and regulations, particularly Chapter 9 of the Commission's regulations.

Applicable Law: The March 5 Order states that the Commission "may look to Federal Energy Regulatory Commission regulations and practices for guidance in the review of the Application; however, the Application will be addressed pursuant to the State Natural Gas Regulation Act . . . and any applicable Commission regulations." Northern objects to the extent this proposed scope deviates from findings in the Investigation Order. Northern notes a change of the word "will" in the Investigation Order to the word "may." Northern and other parties argued in Docket No. NG-0051/PI-130 that due process required the Commission to adopt regulations before entertaining an application under Neb. Rev. Stat. § 66-1853. The Commission elected not to take the time to adopt such regulations. However, the parties, including the Applicant, are entitled to some assurance of the rules and requirements that will be applied to the process and substance of the application. Relying strictly on the Nebraska statutes and existing Commission regulations³ and leaving ambiguous the application of FERC rules and regulations will not afford the parties due process. In its application and in filings

³ None of which is an implementing regulation of Neb. Rev. Stat. § 66-1853.

made in the Investigation Docket, Northern notes that the Applicant appears to pick and choose which FERC requirements with which it intends to comply. Due process dictates that the Commission clearly indicate what requirements and procedures will apply to this application process, rather than defining those requirements as the docket progresses, or even at the conclusion of the docket.

Other Issues Not Mentioned in the March 5 Order:

1. **Nature and Scope of Certificate.** An issue that is embedded in the determination of whether a certificate should be granted to the Applicant is the issue of the scope of the certificate itself. For example, the March 5 Order rightfully acknowledges that the adequacy and sufficiency of the proposed facilities and services must be determined. However, before that can be determined, the Commission must be able to answer the question of “adequacy and sufficiency” for what and for whom? Exactly where will NRC be authorized to serve? If a certificate is granted, NRC will have an obligation to serve, but to whom and under what terms and conditions? Particularly because this is a case of first impression, this proceeding must address the nature and scope of the certificate itself.

2. **Compliance with State Natural Gas Regulation Act and Hinshaw Amendment.** An additional issue that should be part of this proceeding is whether the project described by the Applicant constitutes a project that complies with the State Natural Gas Regulation Act and the requirements of the Hinshaw Amendment. The Applicant maintains that the FERC will regulate the construction of taps and the provision of service to high volume ratepayers. To Northern’s knowledge, no existing Nebraska jurisdictional utility has taken this position, and no jurisdictional utility has

sought authority from the FERC to serve high volume ratepayers. A decision by the Commission that the jurisdictional plan laid out by NRC is appropriate under Nebraska law potentially would expose other jurisdictional utilities to a finding that they are in violation of the Natural Gas Act. Such a finding would carry the potential for significant civil penalties imposed by the FERC. Northern believes that the legality of the overall project plan and the extent of the Commission's jurisdiction are issues that should be expressly addressed in this proceeding.

3. **Compliance with General Rate Case Requirements.** Since the Applicant has asked the Commission to approve rates and tariff provisions, a determination should be made as to which statutory and regulatory requirements apply and whether the Applicant has complied with those requirements.

PROPOSED SCHEDULE

Northern notes that the proposed schedule included in the March 5 Order is basically the same schedule discussed at the planning conference. However, initially, the proposal was for a bi-furcated process where rate issues would be taken up after the certificate issues were determined. Under the proposed schedule in the March 5 Order, the parties will be expected to deal with all the certificate and rate issues simultaneously. Northern does not believe the time allowed for all the steps required in this process is adequate. Neb. Rev. Stat. § 66-1838 allows the Commission 210 days (about seven months) to consider and determine a general rate case. By contrast, in this docket, which involves complex issues of first impression in addition to rate-setting, the Commission apparently plans to issue an order within five months of the filing of the application. Northern does not believe the proposed overall schedule allows either the Commission or

the intervenors adequate time to deal with the complex issues involved in this docket. The Applicant has never presented any evidence of emergency conditions or any particular need for such a compressed schedule. In fact, the Applicant itself chose the timing of its application. There did not appear to be much if anything in the application that would have prevented the application from being filed months earlier. It simply appears that the Applicant waited until the last minute and then expects the Commission and intervenors to adapt to its tardiness.

The time allowed for discovery, testimony, hearing and briefs is woefully inadequate and has not been justified by the Applicant. Northern recommends that the hearing itself be scheduled no earlier than the end of June, and that all dates be adjusted accordingly. Northern questions that three days will be adequate time for the hearing. Nevertheless, Northern is willing to attempt to comply with the proposed schedule, although Northern requests at least one minor modification be made. Discovery by the intervenors should be allowed to continue for at least five business days after the Applicant's rebuttal testimony is filed. The Applicant has already indicated that its direct testimony may lack additional detail beyond that included in the application. However, it is a fair assumption that the Applicant's rebuttal testimony will include additional evidence about which the parties should be allowed to conduct discovery.

Respectfully submitted this 13th day of March 2008.

Northern Natural Gas Company

A handwritten signature in black ink, reading "Penny Tvrdek". The signature is written in a cursive style with a large, looping initial "P".

Penny Tvrdek

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 13th day of March 2008, Comments of Northern Natural Gas Company on March 5 Order Regarding Proposed Schedule and Scope of Hearing was served upon the following by e-mail if applicable or regular U.S. Mail if applicable as follows:

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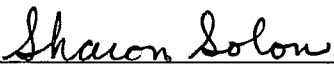
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